



UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No. 20

**CASEY AUGUST
INTELLECTUAL PROPERTY GROUP
INTERNATIONAL BUSINESS MACHINES CORP
P O BOX 218
YORKTOWN HEIGHTS NY 10598**

COPY MAILED

NOV 04 2004

**Director's Office
Office of Patent Publication**

In re Application of :
F. Read McFeely, et al. :
Application No. 09/378,502 : **DECISION ON PETITION**
Filed: August 20, 1999 :
Attorney Docket No. YO999-198 :
:

This is a decision on the Petition Pursuant To 37 CFR 1.181 To Withdraw Holding Of Abandonment, received in the United States Patent and Trademark Office (USPTO) via facsimile transmission on October 19, 2004.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely file a proper reply to the Office letter mailed on August 13, 2002 Accordingly, the Notice of Abandonment was mailed February 4, 2003.

As previously noted, the Petition was received in the USPTO on October 19, 2004. Unfortunately, the holding of abandonment cannot be withdrawn at this time due to the applicant failure to comply with the requirement under 37 CFR 1.181(f), which states:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested, may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Also, Petitioner's copy of a postcard receipt, which Petitioner states acknowledges the receipt of the response to a Notice of Abandonment, do not support receipt of a response, since it does not properly identify a response as required in MPEP 503.

Applicant should seek relief by filing a Petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). The new rule change appears in 62 Federal Regulations, October 10, 1997 or 1203 of the Official Gazette 63, October 21, 1997, 65 FR 57057, Sept. 20, 2000.

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

Further correspondence or inquiries with respect to filing a Petition For Revival Under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or 9285 or as follows:

By mail: Commissioner for Patents
P O Box 1450
Mail Stop Petitions
Alexandria, VA 22313-1450

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-8380.

James E. Danleson

Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publications